



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. Box 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

MAILED
FROM DIRECTORS OFFICE

AUG 19 2005

TECHNOLOGY CENTER 3600

Francis C. Hand
Carella, Byrne Bain, Gilfillan,
Cecchi, Stewart & Olstein
Five Becker Farm Road
Roseland, NJ 07068

In re Application of
William M. Vanderminden
Application No. 09/126,194
Filed: July 30, 1998
For: BAR CART

**DECISION ON RENEWED
PETITION TO WITHDRAW
THE HOLDING OF
ABANDONMENT**

This is a decision on applicant's Renewed Petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on June 7, 2005.

The petition is **GRANTED**.

A review of the file record reveals that the application became abandoned for failure to respond to the Office action mailed to applicant on May 30, 2003. A Notice of Abandonment was mailed on September 30, 2003.

Applicant's Renewed Petition indicates that the Office action was never received.

There is a strong presumption that the Office communication, properly addressed and delivered to the United States Postal Services, was in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating that the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and

- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date of September 2, 2003. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 O.G.53 (November 16, 1993).

Applicant's Renewed Petition provides an explanation of the time period when applicant's representative changed his correspondence address vis-à-vis the date of mailing of the Notice of Allowance and Notice of Allowability. This information indicates that when the Notice of Allowance was mailed on May 30, 2003, the correspondence address was Six Becker Farm Road, Roseland, NJ. Since the Notice of Allowance was mailed to that address, but not delivered (see previous petition) the evidence is acceptable proof of non-receipt as provided by 1156 OG 53.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the abandonment, return the application to pending status and to redate and remail the Notice of Allowability and Notice of Allowance and Issue Fees Due based on the reasoning in the case of *Delgar v. Schuyler*, 172 USPQ 513.



Randolph A. Reese
Special Programs Examiner
Technology Center 3600
(703) 308-3868

RAR/mg: 08/18/05